2015 IL App (5th) 130515-U

NO. 5-13-0515

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

JOHN LEE TILLER,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Clinton County.
	)	
v.	)	No. 12-MR-41
	)	
ILLINOIS PRISONER REVIEW BOARD,	)	Honorable
	)	William J. Becker,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Stewart and Schwarm concurred in the judgment.

ORDER

¶ 1 *Held*: Where the plaintiff failed to establish a valid *mandamus* claim, the order of the circuit court is affirmed.

¶ 2 The plaintiff, John Lee Tiller, appeals the dismissal of his *mandamus* complaint. The circuit court dismissed the plaintiff's complaint for failing to state a claim for relief. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 In 1975, the plaintiff was convicted of first-degree murder for the shooting death of a police officer. He was sentenced to an indefinite term of 100 to 200 years in prison. In 1984, the plaintiff became eligible for parole. The plaintiff received annual parole

hearings for the next four years. The Illinois Prisoner Review Board (Board) denied parole following each hearing. At the time of the plaintiff's conviction, the statute regarding parole hearings stated that the Board must provide "rehearing not more than 12 months from the date of denial." Ill. Rev. Stat. 1975, ch. 38, ¶ 1003-3-5(f). In 1988, the Board denied the plaintiff parole and scheduled the plaintiff's next parole hearing for October 1991. The Board relied upon an amendment to section 3-3-5(f), which stated that the Board may "schedule a rehearing no later than 3 years from the date of the parole denial, if the Board finds that it is not reasonable to expect that parole would be granted at a hearing prior to the scheduled rehearing date" (Ill. Rev. Stat., 1988 Supp., ch. 38, ¶ 1003-3-5(f)). The plaintiff filed a complaint for *mandamus* relief in which he argued that the amendment to the statute as applied to him was an *ex post facto* law. The circuit court agreed with the plaintiff and found the amendment unconstitutional. The Board appealed to the Illinois Supreme Court. See *Tiller v. Klincar*, 138 Ill. 2d 1 (1990) (hereinafter *Tiller I*).

¶ 5 In *Tiller I*, our supreme court agreed with the circuit court and found that the amendment to section 3-3-5(f) as applied to the plaintiff was an *ex post facto* law. *Tiller v. Klincar*, 138 Ill. 2d 1, 12 (1990). Thus, the supreme court upheld the circuit court's order requiring the Board to grant the plaintiff annual parole hearings. The plaintiff's parole hearings continued annually until 2012. In 2012, the maximum interval between hearings was changed from three years to five years. See 730 ILCS 5/3-3-5(f) (West Supp. 2011). Relying upon that amendment to the statute, the Board denied the plaintiff parole at the 2012 hearing and scheduled the next parole hearing for 2015, finding that it

was not reasonable to expect that the plaintiff would be granted parole before 2015. The plaintiff then filed a complaint for *mandamus* relief, and subsequently, an amended *mandamus* complaint, arguing that he had a vested interest in parole hearings. The Board moved to dismiss the plaintiff's amended *mandamus* complaint, arguing that the court lacked subject matter jurisdiction based on sovereign immunity. The circuit court dismissed the plaintiff's amended complaint, finding that it lacked subject matter jurisdiction due to the Board's sovereign immunity. The plaintiff then appealed that dismissal to this court. See *Tiller v. Illinois Prisoner Review Board*, 2013 IL App (5th) 120389-U (hereinafter *Tiller II*). This court reversed and remanded, finding that the plaintiff's suit was not barred by sovereign immunity. *Id.* ¶ 12.

¶ 6 On remand, the plaintiff asked that his claims be set for a hearing. The Board filed a motion to dismiss the complaint pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2012)). In its motion to dismiss, the Board argued that the plaintiff failed to state a valid *mandamus* claim because he could not demonstrate a clear right to annual parole hearings under the doctrine of *res judicata* and no "liberty interest" was created. The plaintiff argued that (1) *res judicata* prevented the dismissal of his complaint because he had already obtained a binding ruling on the question of whether he was entitled to annual hearings, (2) he had a liberty interest in such hearings because the law on "apply[ing]" for parole was couched in mandatory language and he continued to receive annual hearings long after *Fletcher v. Williams*, 179 Ill. 2d 225 (1997), was decided, and (3) applying the 1988 and 2012 amendments to the rehearing statute to him violated the *ex post facto* clause of the United States Constitution (U.S.

Const., art. I, § 10). The plaintiff also argued that the amendments to the rehearing statutes were vindictive and applied specifically toward older inmates.

¶ 7 On September 13, 2013, the circuit court granted the motion to dismiss, explaining that under *Fletcher*, changing the frequency of the plaintiff's parole hearings did not violate the *ex post facto* clause and that the fact that the defendant was given annual parole hearings for a number of years after *Fletcher* was decided did not establish a vested right to annual hearings. The plaintiff appealed.

¶ 8 ANALYSIS

¶ 9 We review *de novo* the order granting a motion to dismiss a *mandamus* petition. *Lucas v. Taylor*, 349 Ill. App. 3d 995, 998 (2004). We view the pleadings in the light most favorable to the nonmoving party. *Id.* We may affirm the decision of the circuit court on any basis found in the record, regardless of whether it was relied on by the circuit court in rendering its decision. *People v. Gumila*, 2012 IL App (2d) 110761, ¶ 56.

¶ 10 *Mandamus* is an extraordinary remedy used to enforce the performance of official duties by a public officer where no exercise of discretion exists. *Lewis v. Spagnolo*, 186 Ill. 2d 198, 229 (1999). Relief under *mandamus* will not be granted unless the petitioner can demonstrate a clear affirmative right to relief, a clear duty of the official to act, and a clear authority in the official to comply with the writ. *Hatch v. Szymanski*, 325 Ill. App. 3d 736, 739 (2001).

¶ 11 The plaintiff argues that *res judicata* bars the Board from changing his parole hearings to three-year intervals rather than annually. *Res judicata* is an equitable doctrine designed to prevent multiple lawsuits between the same parties where the facts and issues

are the same. *Gurga v. Roth*, 2011 IL App (2d) 100444, ¶ 17. However, *res judicata* does not bar a claim when an intervening decision or change of law alters the situation. *Statler v. Catalano*, 293 Ill. App. 3d 483, 485-86 (1997).

¶ 12 In this case, the plaintiff cannot establish a valid *mandamus* claim because he cannot establish that he has a clear affirmative right to relief. The supreme court's ruling in *Fletcher* overruled the plaintiff's initial *ex post facto* claim in *Tiller I*. As noted above, *res judicata* does not affect a suit when an intervening decision changes the situation. *Statler*, 293 Ill. App. 3d at 485-86. *Fletcher* is such a decision. *Fletcher* overturned the very aspect of *Tiller I* that the plaintiff attempts to use in support of his argument. Due to the supreme court's decision in *Fletcher*, the plaintiff cannot show that he has a clear right to annual parole hearings. Thus, when the Board changed the plaintiff's parole hearings to three-year intervals, it was not barred from doing so by previous litigation.

¶ 13 The plaintiff also argues that he has a vested right to annual parole hearings because his annual parole hearings did not stop until 15 years after *Fletcher* was decided. We have found that such actions do no create any such right in the future. See *Bernstein v. Department of Human Services*, 392 Ill. App. 3d 875, 894-95 (2009) (where a judgment enjoining the Illinois Department of Human Services from eliminating funding for a certain mental health treatment did not vest the petitioner with the right to such treatment in the future). To hold otherwise would allow for decisions that are obsolete to somehow maintain footing in our jurisprudence. Thus, the plaintiff did not have a vested right to annual parole hearings.

¶ 14 Finally, the plaintiff argues that the application of the current version of the rehearing statute to him denies him equal protection based on the fourteenth amendment's guarantee of equal protection. He complains that the 1988 and 2012 amendments to the rehearing statutes affect only older inmates. However, the plaintiff is not in a suspect class, nor do the amendments affect a fundamental right. See *Jacobson v. Department of Public Aid*, 171 Ill. 2d 314, 323 (1996). All that is required to sustain the rehearing law is that it survives rational basis review. *Id.* The rehearing laws survive rational basis review because the amendments have a legitimate purpose, that is, the amendments relieve the State of the burden of holding parole hearings for inmates who have no reasonable chance of being released. Further, the rehearing statutes do not target older prisoners, but anyone who is eligible for parole. See 730 ILCS 5/3-3-5(f) (West 2012). Therefore, the plaintiff has failed to state a claim for denial of equal protection.

¶ 15 CONCLUSION

¶ 16 For the foregoing reasons, the judgment of the circuit court of Clinton County is affirmed.

¶ 17 Affirmed.